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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

GARYON NETTLES,

Defendant and Appellant.

C086368

(Super. Ct. No. 97F05802)

Defendant Garyon Nettles appeals from the denial of his Proposition 47 petition to redesignate a prior felony conviction as a misdemeanor. The trial court found him ineligible for redesignation based on his prior convictions for assault with intent to commit rape (Pen. Code, § 220).<sup>1</sup> On appeal, defendant challenges that denial on several grounds.

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

We will conclude that defendant is ineligible for Proposition 47 redesignation because his past convictions for assault with intent to commit rape require him to register as a sex offender under section 290. His assertion that registration is not required because the crimes were not accompanied by force or violence is without merit. Accordingly, we affirm.

## BACKGROUND<sup>2</sup>

In 1985 defendant pleaded guilty to two counts of assault with intent to commit rape (§ 220). Thirteen years later, he was convicted by jury of passing checks with insufficient funds, a felony (§ 476a), among other offenses. After finding defendant had three prior strikes, the trial court imposed a 25-year-to-life sentence along with a determinate one-year term.

In 2012 defendant petitioned under Proposition 36 to recall his sentence. The trial court denied the petition, concluding defendant's prior convictions for assault with intent to commit rape rendered him ineligible for sentence recall. This court affirmed.

In late 2014 defendant petitioned under the newly enacted Proposition 47 (§ 1170.18) to redesignate his felony conviction for passing checks with insufficient funds as a misdemeanor. The trial court denied the petition, finding defendant's prior convictions rendered him ineligible.

In October 2017 defendant filed a petition for a writ of habeas corpus, again claiming eligibility for relief under Proposition 47. The trial court construed the new petition as a petition for relief under Proposition 47 and denied it.<sup>3</sup> It concluded

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<sup>2</sup> The background facts are taken from our opinion in case No. C073336. (*People v. Nettles* (2015) 240 Cal.App.4th 402; see Evid. Code, § 452, subd. (d)(1).) The People's request for judicial notice of the records in case Nos. C029790 and C073336, filed July 24, 2018, is otherwise denied.

<sup>3</sup> The trial court separately denied the petition as a petition for habeas corpus relief. Defendant does not challenge that ruling in this appeal.

defendant's prior convictions for assault with intent to commit rape rendered him ineligible in two respects: first, they constituted sexually violent offenses, and second, they obligated him to register as a sex offender.

## DISCUSSION

On appeal, defendant challenges the denial of his petition on several grounds.<sup>4</sup> We need not, however, reach those contentions as defendant is ineligible for redesignation because of his obligation to register as a sex offender.

Proposition 47 redesignation relief is unavailable to a petitioner who is required to register under section 290. (See § 1170.18, subd. (i); *People v. Shabazz* (2015) 237 Cal.App.4th 303, 314.) Here, defendant's section 220 convictions for assault with intent to commit rape require him to register as a sex offender. (See § 290, subd. (c) ["The following persons shall register: [¶] Any person who, since July 1, 1944, has been or is hereafter convicted . . . of a violation of . . . Section 220, except assault to commit mayhem"].)

Defendant maintains that a section 220 conviction does not require section 290 registration unless the underlying offense involved the use of force or violence. He relies on the language of section 290, subdivision (c), which provides in full (bold added):

"The following persons shall register:

"Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate

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<sup>4</sup> He argues a section 220 conviction for assault with intent to commit rape does not necessarily include an element of force or violence, and as such the trial court erroneously relied on the 1985 plea colloquy, in which he agreed to a factual basis including that he attacked the victims with fists, feet, and bottles and caused various injuries including a fractured skull and ribs, and torn ear lobes. He also argues proof of statutory ineligibility must be established beyond a reasonable doubt.

Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 **involving the use of force or violence for which the person is sentenced to the state prison**, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.”<sup>5</sup>

Defendant maintains the phrase, “involving the use of force or violence for which the person is sentenced to the state prison” applies not only to section 262, subdivision (a)(1) but to each preceding enumerated section, including section 220. As such, not every conviction for assault with intent to commit rape would require registration, only those that involved force or violence and a prison term. Presumably the same would be true of other enumerated offenses including human trafficking (§ 236.1), sexual battery (§ 243.4), and rape (§ 261).

Defendant offers scant authority for this reading of the statute. We find his position untenable. He cites a footnote in *Jama v. Immigration and Customs*

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<sup>5</sup> An amended version of section 290 took effect January 1, 2019. (Stats. 2018, ch. 423 (Sen. Bill No. 1494), § 51, eff. Jan. 1, 2019.) The changes to the statute are minor and not pertinent to this appeal.

*Enforcement* (2005) 543 U.S. 335, 344 [160 L.Ed.2d 708, 717]<sup>6</sup> arguing an exception exists to the last antecedent rule (phrases apply only to words or phrases that immediately proceed them). (See *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.) Defendant argues, “if the modifying clause appears at the end of ‘a single, integrated list,’ then it modifies all terms of the list.” But of course the phrase in question does not appear at the end of a single, integrated list—it appears in the middle of a list of over three dozen enumerated offenses requiring registration. That the phrase is not separated by a comma further bolsters the conclusion that the phrase applies to convictions for spousal rape (§ 262, subd. (a)(1)) and no others.

In short, a section 220 conviction for assault with intent to commit rape obligates registration under section 290. Because defendant has suffered two such convictions, he is ineligible for Proposition 47 redesignation, and the denial of his petition must be affirmed.

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<sup>6</sup> The footnote states in relevant part: “By contrast, in the cases on which the dissent relies to rebut the last antecedent inference . . . the structure cut the other way: the modifying clause appeared not in a structurally discrete statutory provision, but at the end of a single, integrated list --for example, ‘ “receives, possesses, or transports in commerce or affecting commerce.” ’ [Citations.] We do not dispute that a word is known by its fellows, but here the structure refutes the premise of fellowship.” (*Jama v. Immigration and Customs Enforcement, supra*, 543 U.S. at p. 344, fn. 4.)

DISPOSITION

The judgment (order) is affirmed.

RAYE, P. J.

We concur:

ROBIE, J.

DUARTE, J.